

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

S.B. Civil Revision Petition No.69 / 2007

**Prahlad Singh and Another
Vs.
Ambikesh Sharma and Others**

Date of Order :: 17th April, 2007

HON'BLE DR. VINEET KOTHARI, J.

Mr.Rakesh Kumar for the petitioners.

Mr.R.P. Garg)

Mr.Rishhi Parashar) for the respondents.

This revision petition is directed against the order dated 2.4.2007 whereby the learned trial court rejected the objections in Execution Application Nos.20/2007 and 21/2007.

2. Mr. Rakesh Kumar, the learned counsel appearing for the petitioners, submitted that the suit property, namely, a residential house situated at B-36, Sethi Colony, Jaipur was agreed to be sold to the present petitioners by its owner Mr. Bhagwan Sahai Saxena on 20.9.1996 under an agreement to sell, whereas the claim of the decree holders, non-petitioners No.1 and 2, Mr. Ambikesh Sharma and Smt. Susha Sharma,

is that they were already tenants of the said property and were in possession of the first floor of the said residential house and the said Mr. Bhagwan Sahai Saxena had sold the said entire house by a registered sale deed to them on 12.06.1997. The said Mr. Bhagwan Sahai Saxena is said to have expired on 19.12.2001. Thereafter, the said non-petitioners filed eviction suit against the tenants for the ground floor, Dr. Devi Singh and Smt. Beena Singh wife of Dr. Devi Singh and obtained a decree against them and in the first appeal filed by Dr. Devi Singh and Smt. Beena Singh, namely S.B. Civil First Appeal No.18/2007, this Court refused the prayer for interim relief by order dated 25.1.2007.

3. Mr. Rakesh Kumar argued that the present petitioners, Prahlad Singh and Komal Chand Agarwal, were put in possession by the said non-petitioner Nos.4 and 5, namely, Dr. Devi Singh and Smt. Beena Singh. However, on a specific query by the Court, he could not explain under what legal authority, document or agreement, the non-petitioner Nos.4 and 5, Dr. Devi Singh and Smt. Beena Singh, could put the present petitioners into possession of the suit property.

Mr. Rakesh Kumar thereupon submitted that in the injunction suit filed by the present petitioners in Miscellaneous Application No.267/2002 filed for temporary injunction under Order 39 Rules 1 and 2 C.P.C., the trial court had passed a status-quo order on 20.12.2002 vide Annexure – 4 till the next date of hearing i.e. 29.1.2003. He drew the attention of the Court towards the photocopy of the order-sheets filed on 11.4.2007 and submitted the order-sheet entry dated 20.07.2004 clearly indicates that till the next date i.e. 26.7.2004 the previous order was directed to be continued, however, thereafter no such extension of stay order was recorded. However, relying on certain judgments, namely, Mahant Deepak Swami Vs. Additional District & Sessions Judge, (Fast Track), No.5, Jaipur City, Jaipur [2005 (6) RDD 1924 (Raj.) (DB)]; Kanahiya Lal Vs. Thakurji Shri Keshoraiji and Others [2004 WLC (Raj.) (UC) 651] and Hiralal Sharma Vs. Railway Shramik Sahkari Bank Binaker Ltd. Bikaner and Others [1983 WLN (UC) 301, he submitted that such stay order should be deemed to continue and, therefore, in view of the stay order in favour of the present petitioners, the objections filed by them under Order 21 Rule 97 C.P.C. could

not have been rejected by the executing court.

4. Mr. R.P. Garg, the learned counsel appearing for the respondents, opposed the submission of the learned counsel for the petitioners vehemently and urged that these objections were raised in a frivolous manner by the present petitioners and one Smt. Kusum Devi, claiming to be a tenant of the present two petitioners, who never came into possession of the said suit property, whereas non-petitioner Nos.1 and 2 are the registered owner under a registered sale deed dated 12.6.1997 much prior to the date of death of the erstwhile owner Mr. Bhagwan Sahai Saxena and there is no stay order in favour of the present petitioners in the suit filed for specific performance by them on the basis of alleged agreement to sell dated 20.9.1996. He further submitted that these objections have been raised merely to defeat and delay the execution of the decree and such objections cannot be sustained in law and the learned trial court was perfectly justified in rejecting these objections.

5. Having heard the learned counsel for the parties

and upon perusal of the record, this Court is of the opinion that there is no force in this revision petition and the same deserves to be dismissed. It has not been explained as to how and in what manner the present petitioner-objectors, Prahlad Singh and Komal Chand Agarwal, were put in possession of the property in question. The suit for specific performance filed by the present petitioner-objectors is still said to be pending and there is no interim order in their favour from any Court. On the contrary, the decree holders, non-petitioner Nos. 1 and 2 hold the said property under the registered sale deed and have succeeded in obtaining the decree for eviction and possession and in the execution of such decree, they are faced with these objections, which in the opinion of this Court are not sustainable. When the judgment-debtors, non-petitioners No.4 and 5, Dr. Devi Singh and Smt. Beena Singh, originally the tenants of the ground floor of the said property have also failed to secure any interim relief from this Court as would be evident from the order dated 25.1.2007 rejecting their prayer for interim relief in S.B. Civil First Appeal No.18/2007, there is no question of protecting the possession of the present petitioner-objectors, Prahlad Singh and Komal

Chand Agarwal, who claimed to have been put into possession by the non-petitioner Nos.4 and 5, Dr. Devi Singh and Smt. Beena Singh themselves.

6. The objections, therefore, appear to be unsustainable and have been rightly rejected by the learned trial court and do not call for any interference by this Court in the present revision petition. The revision petition is devoid of any merit and the same is, accordingly, dismissed with no order as to costs.

[DR. VINEET KOTHARI], J.

S.S.
Jr.P.A.